

Committee on Resources,

Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

**The State of the County:
The Not-So-Orderly Development
Of
Coal Bed Methane in La Plata County
August 31, 2001**

Madam Chair, Representatives:

Thank you for giving me the opportunity to address you today. I would ask you to view my remarks as though the title of this hearing were "The Orderly Development of Coal Methane Resources from Public Lands and the Consequences of Federal Energy Policy on Affected Communities." Development on public land cannot be divorced from development on non-public lands. Many people think that the former does not affect the latter and I want to address that misconception.

Some history: La Plata County is located at the northern edge of the San Juan Basin in southwest Colorado, and we have a very different set of circumstances than in Wyoming. Approximately 44,000 well governed people call it home, and if you have never been there, I would encourage you to come out for a visit, because it is truly one of the finest places on Earth. In the late 1980's, coal bed methane (cbm) development began in earnest in La Plata County because of one event: the initiation of federal tax credits. They are a prime example of the far reaching impact of federal energy policy . La Plata County was at ground zero when the coal bed methane experiment came out of the laboratory and hit the real world. No one really knew what would happen when production began, and La Plata County was where they found out.

While La Plata County receives about \$5 million a year in property tax revenues from oil and gas, in general, this has been a tale of acrimony and lawsuits, environmental degradation, people being displaced from their homes. If there has been an upside, it is that myths such as self-regulation and the dominance of the mineral estate have been exposed. The result has been that now one of the most powerful lobbies in, not only the state, but the nation-- the oil and gas industry lobby, and the state of Colorado, in the form of the Colorado Oil and Gas Commission, which is dominated by representatives of the industry, are pitted against the people of La Plata County. There is one reason for this: La Plata County has asserted its statutory rights as a county to exercise its land use authority over the development of the mineral estate. La Plata County maintains that land use is a matter of local control, and the surface aspects of cbm development fall within its purview.

In the late 1980's, coal bed methane came to town, and then in the early 1990's, people started coming to town. Residential development and industrial development are by their very natures, not compatible. The two have collided because 1) the nature of the 'split estate' and 2) coal bed methane has a greater impact on a community than does tight sand gas production.

No one contests the fact that county government can manage and direct residential growth. Since we continue to assert that county government does have a role to play in the development of the resource, we will continue to do what is right for the surface owners in our county. To get basic about this: the surface is where people live, and La Plata County will see to it that development is done to minimize the impacts on those people. This is as important as it gets: protecting our people.

I want you to remember the tax credit. We sit atop one of the largest natural gas fields in the country and we realize that the resource will be extracted. What we ask is that the federal government not exacerbate our problems by spurring development of a resource that does not need any incentive to be developed. The market place has provided all the incentives that the natural gas industry needs in order to profit. There was nothing unconventional about coal bed methane back in 1987 and it is less unconventional in 2001 after fourteen years of development than it was back then.

We are a county of 44,000 in a nation of 280 million. Do our people matter to the federal government? They matter to me and my fellow commissioners. That is why we have fought the fights we have fought. That is why I am here today: to do what I can to make sure that our people are not run over roughshod by federal policy. What you will recommend will affect us. As my fellow commissioner Fred Klatt has said, We will not be a national sacrifice area. We will not see our drinking water aquifers destroyed and our land torn apart by well pads. We will have a voice in what happens in our community. I am here representing the residents of La Plata County and my residents do not need to endure the onslaught that will come from the next wave of tax credits. The residents of La Plata County deserve better than to be under siege because the federal government has thrown an unnecessary bone to an already prospering industry.

I invite you to get outside the Belt Way, and take a trip down to La Plata County to see first hand what happens when the federal government acts without considering the consequences. Come talk to our people, and hear their stories before you make any decisions that will affect their lives.

The State of the County: The Not-So-Orderly Development of Coal bed Methane in La Plata County

La Plata County is a county of 44,000 well-governed people, situated in southwest Colorado, approximately 330 miles from Denver. It sits atop the northern boundary of the Fruitland Formation, the largest repository for coal bed methane in the United States. These two facts are the basis for La Plata County's concerns and how it became involved in dealing with coal bed methane development.

Coal bed methane (cbm) drilling first began in the mid-late 1980's in La Plata County because of one simple act: the initiation of federal tax credits. At that time, coal bed methane was classified as an unconventional fuel. The consequences of this act would not be simple; in fact, the consequences of this act would be down right confusing. Although it was federal action that spurred development, development would not occur just on federal land. There were essentially three classes of land on which cbm development would occur: federal land, private land and the land on the sovereign nation of the Southern Ute Indian Tribe. This meant that oversight and regulation of exploration and drilling was split between the Bureau of Land Management (BLM) on federal and tribal land, and the Colorado Oil and Gas Conservation

Commission (COGCC) on private land. Since the impacts of drilling do not recognize political boundaries, the bifurcation of regulatory authority would prove to be troubling. Also, on private land, the ownership of the surface and the mineral estates was quite often split; this meant that the surface owner might not own the minerals underlying his property. The "split estate" aspect of this project would prove to be one of the most complicating.

In 1991, due mainly to this split estate, La Plata County adopted regulations that addressed the orderly development of oil and gas as it pertained to the surface estate. These regulations dealt with the land use aspects of development, and applied to both major facilities such as compressor stations, and minor facilities such as individual well. The subsequent lawsuit, *Bowen-Edwards v. La Plata County*, went to the Colorado Supreme Court and in 1992, La Plata County prevailed; the legal basis for local control of oil and gas development was established. The Court found that counties can exercise their land use powers in this area, provided that county regulations do not create an "operational conflict" with COGCC regulations. To date, La Plata County regulations have not created an operational conflict. Roughly, 2000 wells have been permitted under the county system, and under that system, not one well has been denied.

It is important to understand that the state of Colorado is an industry-friendly state. Its governor is the former head of the Rocky Mountain Oil and Gas Association. Its COGCC is predominantly comprised of people with ties to the oil and gas industry. Their task is to promote the development of Colorado's oil and gas natural resources, and they take their charge very seriously and pursue it with great vigor.

It is also important to understand that La Plata County is a resident-friendly county. In the early 1990's, around the time when cbm development was beginning in earnest, La Plata County was discovered by the outside world, and the residential boom that is still with us began. By their very natures, industrial and residential development are not compatible, and much of this residential boom took place in the area where the drilling was occurring. Cbm development has a much greater impact on a community than does the production of tight sand gas and it did not take long for residents to feel that impact. County roads, designed as farm-to-market roads, were being blown apart by heavy truck traffic; because of this increased traffic on gravel roads, air quality suffered. Drinking water aquifers were being contaminated and depleted. There were vegetation die-offs because of gas seeps at the Fruitland Formation's outcrop. Pump jacks were put into neighborhoods and the county had no ability to deal with something as basic as regulating the noise levels coming from this equipment.

Then in 1993, it was discovered that residences in the Pine River Ranches were in danger because of these gas seeps. (This is explained more thoroughly on Page 2 in the 'Environmental and social Impacts of Coal Bed Methane Development La Plata County, Colorado' section of this report). Subsequently, five families were re-located from their homes. While natural gas might be considered a relatively environmentally friendly, clean-burning fuel on the consumption end, it is anything but that on the production end.

Because of the lack of any substantive response from either the BLM or the COGCC, people looked to county government to help them deal with these problems. Cbm development was affecting their lives; it was affecting their homes, their property values, their security. Cbm development does not occur in a bubble. It occurs where people live; it occurs in subdivisions. Most of the COGCC and BLM regulations deal with technical aspects of extraction; they do not address the problems people were facing. La Plata County regulations do address these problems.

In 1995, La Plata County began the process of revising and adding to our regulations. The question that was repeatedly asked by industry and the state was "Why are you doing this?" The answer was that we knew the

next round of drilling at 160 acre spacing (down spacing) was inevitable, and we wanted to take what we had learned from the first round of drilling and adapt our regulations to fix the problems before they happened at 160 acre spacing. Over the next 18 months that it took the task force to draft regulations, the county was told repeatedly that this effort was unnecessary because there was nothing on the radar screen about down spacing. Less than six months after the regulations were adopted, the state of Colorado joined the Colorado Oil and Gas Association (COGA) in a lawsuit against La Plata County. Less than six months after the regulations were adopted, the first application for 160 acre spacing was processed by the COGCC. It is that kind of collusion and deception that has created the atmosphere of distrust and skepticism that currently exists in La Plata County toward both the industry and the state.

As has been stated previously, La Plata County is over 300 miles from Denver. While that generally works in our favor, when dealing with legislative matters it puts us at a disadvantage. The oil and gas industry has one of the strongest lobbies in the state, and is present on a daily basis to advance its position. Consequently, the range of legislative understanding of the oil and gas issue generally runs in the vein of: "gas clean; gas cheap; gas good." The myths that any regulation, and especially local regulation, is detrimental to the industry, that local regulation will drive the industry out of the state, that local regulation is driving up the cost of gas and will result in people starving to death in the dark are propagated daily, and like anything, if repeated often enough, become common knowledge. It is a constant source of amazement to listen to good solid conservative legislators, advocates for personal freedom, believers that government should be as close to the people as possible, not support the idea of local control when it comes to this issue. Having gotten little or no support from the COGCC, people have repeatedly turned to the Colorado legislature for help. Efforts to reconfigure the composition of the COGCC to make it less a 'puppet of the industry', efforts to bring the rights of surface owners up to the same level as those of the mineral estate, efforts to compensate surface owners for damages incurred by drilling operations have all been defeated. It is very difficult to fight the fight when you are 300 miles away from the battleground.

It is even more difficult to deal with changes that come from Washington. We have been fortunate in La Plata County in recent years in that we have cultivated a positive working relationship with the local BLM office. This was not always the case. In the early 1990's, regional BLM administrators viewed their mission to be one of getting the resource out of the ground. While it was our hope that the federal government would bring some accountability into the mix and establish "best practices" standards at least on its own land, the reality of the situation was that BLM policy did not acknowledge that it affected our community, nor was there acceptance of responsibility for the impacts of those policies. Roughly 49% of the wells in LPC are under BLM oversight. Our concern is that could happen again. It is not just development on federal land over which BLM has jurisdiction; BLM also has jurisdiction on Southern Ute Tribal lands, and dealing with a sovereign nation can be even more problematic. For example: if the BLM decides, for whatever reasons, that it wants to set well spacing at one well per 80 acres or one well per 40 acres, technically, the BLM can set that spacing. While there is an Memorandum of Understanding between the BLM and the COGCC which says that for such things as spacing orders on federal or tribal land, the BLM shall go through the COGCC's docketing and hearing process and that it shall concur with the proposal of the applicant, there is nothing that mandates the BLM to comply with the MOU. It can pull rank over the COGCC, as it has in one instance involving an application by the Southern Ute Indian Tribe, and proceed over the objections of the COGCC. It is that ability of the federal government to act unilaterally and spur development that has La Plata County most concerned.

If there is one thing La Plata County wants to make sure the members of this Committee understand, it is this: the development of the coal bed methane resource affects people's lives. That is something that

Colorado's governor, the Colorado Legislature, and the Colorado Oil and Gas Conservation Commission have all turned a deaf ear to and hopefully you will not. This cannot be viewed strictly as an exercise in the profitable extraction of the resource. It cannot be strictly a matter of gas-in-place estimates, and hydraulic fracking gels, and production water disposal zones, and debates over which is more efficient---progressive cavity or traditional pump jacks. If it has come to that, then we as a nation are in deep trouble. What we ask is that the federal government not exacerbate our problems by spurring development of a resource that does not need any incentive to be developed. The market place has already provided all the incentives that the natural gas industry needs in order to profit. There was nothing unconventional about coal bed methane back in 1987, and it is less unconventional in 2001 after fourteen years of development than it was back then.

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